

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

FILED

10/9/2019

Clerk, U.S. District Court
District of Montana
Helena Division

CV 19-00036-H-BMM-JTJ

IN RE: DARRELL WAYNE
CHAPAROSA,

FINDINGS AND RECOMMENDATIONS OF
UNITED STATES MAGISTRATE JUDGE

Plaintiff Darrell Chaparosa filed a document which was liberally construed as a Complaint. (Doc. 1.) On July 22, 2019, the Court screen the filing pursuant to 28 U.S.C. §§ 1915, 1915A and determined that Mr. Chaparosa had failed to state a claim because he had not named a defendant or provided a clear statement of his claims. Mr. Chaparosa was given an opportunity to file an amended complaint. (Doc. 6.) On September 3, 2019, Mr. Chaparosa filed what has been construed as a response to the Court's Order (Doc. 8) but he still has not named a defendant or provided a clear statement of his claims.

Mr. Chaparosa's filings violates Rule 8 of the Federal Rules of Civil Procedure. He had not listed any defendants, provided no facts, or provided any intelligible allegations. The exhibits provide no meaningful indication about what claims Mr. Chaparosa is trying to bring. As such, the Complaint fails to state a claim upon which relief may be granted.

The Court has considered whether Mr. Chaparosa could further amend the complaint to state a claim upon which relief can be granted. “Valid reasons for denying leave to amend include undue delay, bad faith, prejudice, and futility.” *California Architectural Bldg. Prod. v. Franciscan Ceramics*, 818 F.2d 1466, 1472 (9th Cir. 1988); *see also Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court does not have to allow futile amendments).

A party’s “repeated failure to cure deficiencies” constitutes “a strong indication that the [party] has no additional facts to plead” and “that any attempt to amend would be futile[.]” *See Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 988, 1007 (9th Cir. 2009) (internal quotation marks omitted) (upholding dismissal of complaint with prejudice when there were “three iterations of [the] allegations—none of which, according to [the district] court, was sufficient to survive a motion to dismiss”); *see also Simon v. Value Behavioral Health, Inc.*, 208 F.3d 1073, 1084 (9th Cir. 2000) (affirming dismissal without leave to amend where plaintiff failed to correct deficiencies in complaint, where court had afforded plaintiff opportunities to do so, and had discussed with plaintiff the substantive problems with his claims), *amended by* 234 F.3d 428, *overruled on other grounds by Odom v. Microsoft Corp.*, 486 F.3d 541, 551 (9th Cir. 2007);

Plumeau v. Sch. Dist. # 40 Cnty. of Yamhill, 130 F.3d 432, 439 (9th Cir. 1997)

(denial of leave to amend appropriate where further amendment would be futile).

Here, Mr. Chaparosa was advised that his allegations were insufficient to state a claim. His subsequent filing failed to correct the deficiencies set forth by the Court's July 22, 2019 Order. Thus, the Court finds that amendment would be futile and will recommend that leave to amend be denied.

A. "Strike" under 28 U.S.C. § 1915(g)

The Prison Litigation Reform Act prohibits prisoners from bringing forma pauperis civil actions if the prisoner has brought three or more actions in federal court that were dismissed for frivolousness, maliciousness, or for failure to state a claim. 28 U.S.C. § 1915(g). The Court should designate this case as a "strike" under this provision because Mr. Chaparosa failed to state a claim.

B. Certification Regarding Appeal

The Federal Rules of Appellate Procedure provide as follows:

[A] party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court-before or after the notice of appeal is filed-certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding;

Fed.R.App.P. 24(a)(3)(A).

Analogously, 28 U.S.C. § 1915(a)(3) provides “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” The good faith standard is an objective one. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). A plaintiff satisfies the “good faith” requirement if he or she seeks review of any issue that is “not frivolous.” *Gardner v. Pogue*, 558 F.2d 548, 551 (9th Cir. 1977) (*quoting Coppedge*, 369 U.S. at 445). For purposes of section 1915, an appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke*, 490 U.S. at 325, 327; *Franklin v. Murphy*, 745 F.2d 1221, 1225 (9th Cir. 1984).

The record makes plain that Mr. Chaparosa’s filings are frivolous and lack arguable substance in law or fact. No reasonable person could suppose an appeal would have merit. The Court should certify that any appeal of this matter would not be taken in good faith.

C. Address Changes

At all times during the pendency of this action, Mr. Chaparosa must immediately advise the Court of any change of address and its effective date. Failure to file a notice of change of address may result in the dismissal of the action for failure to prosecute pursuant to Fed.R.Civ.P. 41(b).

Based upon the foregoing, the Court issues the following:

RECOMMENDATIONS

1. This matter should be DISMISSED. The Clerk of Court should be directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

2. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the instant Complaint lacks arguable substance in law or fact.

3. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Mr. Chaparosa failed to state a claim.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Mr. Chaparosa may file objections to these Findings and Recommendations within 14 days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail). . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Mr. Chaparosa is being served by mail, he

file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 9th day of October, 2019.

/s/ John Johnston
John Johnston
United States Magistrate Judge

is entitled an additional three days after the period would otherwise expire.